

105TH CONGRESS
2D SESSION

H. R. 4507

To limit the authority of the Commodity Futures Trading Commission to alter the regulation of certain hybrid instruments and swap agreements under the Commodity Exchange Act.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 6, 1998

Mr. SMITH of Oregon (for himself, Mr. COMBEST, and Mr. EWING) introduced the following bill; which was referred to the Committee on Agriculture

A BILL

To limit the authority of the Commodity Futures Trading Commission to alter the regulation of certain hybrid instruments and swap agreements under the Commodity Exchange Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Financial Markets Re-
5 assurance Act of 1998”.

6 **SEC. 2. REGULATORY RESTRAINT ON QUALIFYING HYBRID**
7 **INSTRUMENTS AND SWAP AGREEMENTS.**

8 (a) **DEFINITIONS.**—In this section:

1 (1) COMMISSION.—The term “Commission”
2 means the Commodity Futures Trading Commission.

3 (2) QUALIFYING HYBRID INSTRUMENT OR SWAP
4 AGREEMENT.—The term “qualifying hybrid instru-
5 ment or swap agreement” means a hybrid instru-
6 ment or swap agreement that—

7 (A) was entered into before the start of the
8 restraint period or is entered into during the re-
9 straint period; and

10 (B) is exempt under part 34 or part 35 of
11 title 17, Code of Federal Regulations (as in ef-
12 fect on January 1, 1998), qualifies for the safe
13 harbor contained in the Policy Statement of the
14 Commission regarding swap agreements pub-
15 lished in the Federal Register on July 21, 1989
16 (54 Fed. Reg. 30694), or qualifies for the ex-
17 clusion set forth in the Statutory Interpretation
18 of the Commission concerning certain hybrid in-
19 struments published in the Federal Register on
20 April 11, 1990 (55 Fed. Reg. 13582).

21 (3) RESTRAINT PERIOD.—The term “restraint
22 period” means the period—

23 (A) beginning on the date of the enactment
24 of this Act; and

1 (B) ending on September 30, 1999, or the
2 first date on which legislation is enacted that
3 authorizes appropriations for the Commission
4 for a fiscal year after fiscal year 2000, which-
5 ever occurs first.

6 (b) LIMITATION ON REGULATORY CHANGES.—Dur-
7 ing the restraint period, the Commission may not propose
8 or issue any rule or regulation, or issue any interpretation
9 or policy statement, that restricts or regulates activity in
10 a qualifying hybrid instrument or swap agreement.

11 (c) EXCEPTIONS.—Notwithstanding subsection (b),
12 during the restraint period, the Commission may—

13 (1) act on a petition for exemptive relief under
14 section 4(c) of the Commodity Exchange Act (7
15 U.S.C. 6(c));

16 (2) enter such cease and desist orders and take
17 such enforcement action, including the imposition of
18 sanctions, as the Commission considers necessary to
19 enforce any provision of the Commodity Exchange
20 Act (7 U.S.C. 1 et seq.) or title 17, Code of Federal
21 Regulations, in connection with a qualifying hybrid
22 instrument or swap agreement, to the extent such
23 provision is otherwise applicable to that qualifying
24 hybrid instrument or swap agreement or a trans-

1 action involving that qualifying hybrid instrument or
2 swap agreement;

3 (3) take such action as the Commission consid-
4 ers appropriate with regard to agricultural trade op-
5 tions; and

6 (4) take such action as the Commission consid-
7 ers appropriate to respond to a market emergency.

8 (d) RELATION TO CERTAIN COMMISSION DOCU-
9 MENTS.—The legal status of contracts involving a qualify-
10 ing hybrid instrument or swap agreement shall not differ
11 from the legal status afforded such contracts during the
12 period beginning on July 21, 1989, which was the date
13 on which the Commission adopted a Policy Statement re-
14 garding swap agreements (54 Fed. Reg. 30694), and end-
15 ing on January 1, 1998. Neither the comment letter of
16 the Commission submitted on February 26, 1998, to the
17 Securities and Exchange Commission regarding the pro-
18 posal known as “Broker-Dealer Lite”, nor the Concept
19 Release of the Commission regarding over-the-counter de-
20 rivatives published in the Federal Register on May 12,
21 1998 (63 Fed. Reg. 26114), shall alter or affect the legal
22 status of a qualifying hybrid instrument or swap agree-
23 ment under the Commodity Exchange Act (7 U.S.C. 1 et
24 seq.).

1 (e) RULE OF CONSTRUCTION.—Nothing in this sec-
2 tion shall be construed as reflecting or implying a deter-
3 mination that a qualifying hybrid instrument or swap
4 agreement, or a transaction involving a qualifying hybrid
5 instrument or swap agreement, is subject to the Commod-
6 ity Exchange Act (7 U.S.C. 1 et seq.).

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